

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 6,
2001 at 9:05 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 223, 1/31/2001
Executive Action: SB 242, SB 293, SB 337, SB 342

HEARING ON HB 223

Sponsor: REP. TRUDI SCHMIDT, HD 42, GREAT FALLS

Proponents: Thomas Olson, representing self
Ann Gilkey, Court Assessment Program

Opponents: None

Opening Statement by Sponsor:

REP. TRUDI SCHMIDT, HD 42, GREAT FALLS, opened on HB 223, which codified the current practice of publication of child abuse and neglect cases on persons who could not be found or identified for personal service. The bill changed the current process by requiring publication where the subject could see it. Currently, the information was published where the case was pending, even if they knew the parent wouldn't see it because the parent lived somewhere else. She said House amendments further clarified the bill to make it even better.

Proponents' Testimony:

Thomas Olson, representing self, said he was a retired District Judge who helped get this bill started. He listed a few reasons for the bill. 1) To serve missing parents, the Rules of Civil Procedure had to be followed in publishing a summons. The Rules did not authorize these cases to be published. It was a conflict in the law resolved by HB 223. 2) The major problem in publishing a summons, the County Attorney and the Judge did not really know what should be included in the summons. HB 223 provided a checklist for the summons's content. 3) Serving someone whose parental rights were to be terminated was hopelessly incomplete. The law said the only public person that could be published on was someone accused of abandonment. It was too narrow. HB 223 also addressed that issue.

Ann Gilkey, Court Assessment Program, said she worked in this area for many years and the problems addressed by HB 223 were statewide for judges, county attorneys, and attorneys working in this field. The House amendments helped clarify the bill and addressed concerns raised. She noted another concern in the House Judiciary was the procedure of Service of Process on absent parents. She said current practice, without the bill, was to publish where the action took place, even if the person was suspected to be outside the area. HB 223 was a genuine attempt to find the absent parent and was a vast improvement over current practice.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. DUANE GRIMES asked for clarification: if paternity was unclear, how was publication done. He was thinking of cases where a father was named publicly, but circumstances indicated that another could also be the father. **Ann Gilkey, Court Assessment Program**, replied a punitive father was someone who might be the father, but he wasn't listed on the birth certificate, and wasn't necessarily coming forward. In some cases there was more than one punitive father. Everyone's parental rights were considered, whether they were the biological or punitive father. An attempt was made to find the people and last resort was publication in a newspaper. Currently, the Rules of Civil Procedure, which didn't clearly allow Service by Publication for abuse and neglect cases, was used to Serve where the action was pending. First response would be to Serve the last known address.

SEN. GRIMES wanted to know what other cases were Served by Publication. **Ms. Gilkey** said probate, divorce, other civil cases used that method.

SEN. GRIMES asked if this bill set a precedent. **Ms. Gilkey** said no. It clarified a confusing, existing law and practice. It made it useful and more fair to the people who would be Served this way.

SEN. JERRY O'NEIL announced he did a survey of the Clerks of Court in Montana. One of the questions asked, "in a divorce case where one parent was missing, did publication need to be made in the county where the petition was filed, or in the locality of the last known address." He reported there was no clear consensus. He said it was the same response for other family law cases in Montana. He asked if those cases should be addressed now and asked Judge Olson to sit on a committee to work on it so all family law cases were handled in an understandable manner.

Thomas Olson, representing self, responded he was retired, but would be willing to sit on such a committee. However, he did not want to address all the issues in this particular bill.

SEN. O'NEIL asked if those inclusions could be made in one committee meeting in the next week. **Mr. Olson** said he would be willing to look at the issue.

SEN. MIKE HALLIGAN stated concern about the publication as stated on page 2. Did the bill specify the Service would go to the last

known address and publish where the parent might be? It required two publications? **Mr. Olson** believed that subclause 2a narrowed it down to publication in the area where the missing parent could possibly see it.

SEN. HALLIGAN then asked if an affidavit was prepared, sent to the last known address, but returned and information gave a new location, then would it be possible to only publish at this new location and not also the last known address. **Mr. Olson** said yes that was the preferable place to publish.

SEN. HALLIGAN referred to page 1, asking the time line of termination. **Ms. Gilkey** said the concern was not to proceed with termination of parental rights until the publication was given. That took time, so initial hearings were allowed. She suggested caution so that the amendment did not tie the court's hands. She also commented on his question regarding where to publish. She read it to say it would be published both places and suggested the word "or".

SEN. HALLIGAN assumed if grandparents were available, then the child should not go straight into a guardianship because those laws were being amended. He questioned that under a T.I.A. the child could be placed with the grandparents. He was guarding against excluding a petition that could be used as a temporary avenue. He didn't want it limited to three. **Ms. Gilkey** said it did limit it, but it was pending the publication. Following publication, other things could be done. She didn't think it was too narrow.

CHAIRMAN LORENTS GROSFIELD referred to page 1, section 2, sub 1. He said the department was required to do due diligence and have an affidavit, but further down, the affidavit was sufficient evidence of the diligence. He thought that language was not defined enough. **Ms. Gilkey** said the House amendment was based on similar concerns. The amendment attempted to say even though an affidavit was sworn testimony under oath, the judge had the ability to say it wasn't enough. It didn't force the judge to accept it. She acknowledged that Judge Olson was in agreement. She said the due diligence on the affidavit was enough so the person didn't have to come in and testify.

CHAIRMAN GROSFIELD asked Judge Olson to respond as well. If the affidavit looked cursory, how would that work? **Mr. Olson** said section 2 attempted to get away from the practice of having to take a newly issued summons to the sheriff when it was known the missing parent was not in the county. He said that was a waste of time and taxpayer money. Therefore, the onus was on the department to tell the court what had been done. He agreed that

if the affidavit looked insufficient, then the judge could turn it back to the department for further information.

CHAIRMAN GROSFIELD clarified that this would be the process used by judges across the state. **Mr. Olson** said he was comfortable that that would be the procedure.

SEN. HALLIGAN clarified the existing Rules of Civil Procedure used the due diligence language and the courts were used to that. He noted that judges checked and balanced the original affidavit in accord with due diligence, and once in court, they asked again.

Closing by Sponsor:

REP. SCHMIDT closed on HB 223, requesting the bill stay as it was and not include other family law issues because it took considerable time and talent. She said the bill added another layer of finding a parent in the department's child abuse and neglect cases. She felt the amendments were good. She noted if it passed, **SEN. HALLIGAN** had agreed to carry it.

EXECUTIVE ACTION ON SB 337

Motion: **SEN. GRIMES** moved **AMENDMENTS SB033701, EXHIBIT(jus30a01)**.

Discussion:

SEN. DUANE GRIMES said the amendments made sure there wasn't a conflict in the code and said **Valencia** could explain.

{Tape : 1; Side : B}

Valencia Lane, Legislative Staffer, said amendments were made to Title 25, small claims courts. Following the original draft they realized Title 3, the general sections relating to courts, had similar provisions. To make the bill complete it should have included those sections as well. The committee still had a policy decision to determine if they wanted to pass the bill or not.

Vote: Motion to **adopt amendments SB033701 carried unanimously.**

Motion: **SEN. GRIMES** moved that **SB 377 DO PASS AS AMENDED.**

Discussion:

SEN. RIC HOLDEN referred his question to **SEN. HALLIGAN** asking if he recalled the concerns brought up last session about this same issue.

SEN. MIKE HALLIGAN said they would come up on the next bill. The problem he had was the property manager actually being the attorney. They might end up with some negligence in that and somebody could get hurt worse with triple damages. In small claims court, they could attend without an attorney. This allowed some of those actions in small claims court without an attorney.

SEN. DUANE GRIMES closed on his motion. He hoped Justices of the Peace were ready for this, but they didn't oppose it, so that was a good sign. He thought it was a good move.

Vote: Motion that **SB 377 Do Pass As Amended** carried unanimously.

EXECUTIVE ACTION ON SB 342

Motion: **SEN. HALLIGAN** moved **AMENDMENTS SB034201**.

Discussion:

SEN. MIKE HALLIGAN explained the amendment allowed them to pursue the issue the entire way.

Vote: Motion to **adopt amendments SB034201** carried unanimously.

Motion: **SEN. GRIMES** moved that **SB 342 DO PASS AS AMENDED**.

Discussion:

SEN. MIKE HALLIGAN stated his concerns about the absence of a lawyer who understood the Rules of Civil Procedure and the due process issues, and the Landlord Tenant Act allowed triple damages to the tenant if they weren't treated appropriately. He understood that these were small cases that lawyers didn't like to take, landlords didn't like to pay for council, and once the renter received notice, they usually moved out. Therefore, these cases usually did not go to court. He felt there was room for mischief in court because people weren't following the rules and potentially did not include the full request for damages or what they needed. It muddled up the process. He thought maybe it should be tried though.

SEN. DUANE GRIMES said there were unsophisticated and more sophisticated property managers. He foresaw problems with owners

who expected too much on the part of their managers. He thought the approach to trying it was necessary because tenants were becoming more problematic. He thought it should be passed to see how it worked.

CHAIRMAN LORENTS GROSFIELD said it appeared landlords wanted the bill and felt they could handle the triple damages. He asked if that was **SEN. HALLIGAN's** understanding.

SEN. HALLIGAN said yes. He didn't know where it was going in terms of the State Bar and practicing law without a license. That was a separate issue that the legislature didn't have control over. He noted out-of-state property owners contracted with in-state property managers. They didn't want anything to do with it. If someone needed to be sued, they expected not to go to court. That owner may not be aware of how sophisticated the manager might be on the rules in Justice Court.

CHAIRMAN GROSFIELD said they would find out.

SEN. STEVE DOHERTY asked **SEN. HALLIGAN** if a property manager did make mistakes who would the aggrieved tenant go after and where would they go to collect? He said the landlord and the manager would point the finger at one another saying, "he was acting outside the scope of their authority, he didn't have the authority to do that, he shouldn't have done that, I wouldn't allow him to do that because I'm a responsible landlord. . . ." Essentially, each would disavow any responsibility, knowledge, or legal liability for the actions of the other. What happened in that case?

SEN. HALLIGAN said that was why the bill wasn't passed last time. He thought under the agency relationship the landlord would be responsible for the mistakes of the property manager.

SEN. DOHERTY replied as long as he was acting in the scope of his authority. However, the first case that came up, the landlord would dump the property manager saying that manager acted outside the scope of authority and the manager should be solely responsible. The landlord would not pay the fine because they were simply collecting rent and didn't know anything about the incident.

SEN. WALT McNUTT followed up saying they couldn't predict what would happen.

Vote: Motion that **SB 342 Do Pass As Amended** carried 5-4 with **Bishop, Doherty, Halligan, and Pease** voting no.

EXECUTIVE ACTION ON SB 293

Motion: SEN. DOHERTY moved AMENDMENTS SB 029302, EXHIBIT (jus30a02) .

Discussion:

SEN. STEVE DOHERTY mentioned the news organizations were concerned about their ability to conduct legitimate inquiries and investigations. It wasn't his intention to stymie legitimate investigative reporting in Montana. He said the Department of Justice had been in touch with the Associated Press to work out amendments.

Valencia Lane, Legislative Staffer, pointed out that the amendments were discussed earlier.

SEN. DOHERTY asked about amendment #1.

Debra Nordlund, Department of Justice, replied it was a technical amendment to put insurance companies, employers, and other legitimate business purposes into section 7 of the bill; permissive use of non-highly restrictive information. The second amendment was conceptually discussed in front of the committee. It inserted the journalistic article language into the section regarding research and statistical report production. She said she had talked with the media about other concerns they had as well.

SEN. DOHERTY asked the media's perspective on the amendments.

Ian Marquand, Society of Professional Journalists, said the amendment discussed between himself and Ms. Nordlund went to section 7 of the bill dealing with research. It permitted research for journalistic articles. He would like the prohibition on publication deleted. He wanted the media specifically referenced in the bill that they had a legitimate research interest in these issues. In other conversations concerns were raised about the Constitutional muster of this piece of legislation in general. He brought up section 6, access to highly restricted information which went back to the issue of photographs.

John Kuglin, Montana Bureau Chief of Associated Press, took over to discuss the amendment. He said they were concerned that the bill might restrict the ability of law enforcement to provide photographs from a drivers' license for legitimate purpose to publish in order to apprehend a fugitive. He mentioned the case of the Freeman. The media was given their photographs to publish

so citizens could help spot them and assist in their apprehension. Also, in section 6, subsection 2a, he provided another amendment, **EXHIBIT(jus30a03)**. A final point about Constitutional muster. The bill stated it was consistent with the Montana Constitution. He said that might be true in regard to the privacy provisions, but an outright prohibition on release of the information seemed to violate Article 2, section 9 of the Constitution which required a balancing act to ensure that something could be private only if the demand of individual privacy clearly exceeded the public's right to know.

SEN. DOHERTY asked if **Ms. Nordlund** had seen the amendment just suggested.

Ms. Nordlund said she had seen it, but had not talked about it with her principal. She argued it was the age-old conflict between the right to know and the right of privacy. She thought the amendment was too broad. She felt law enforcement could make the call to provide information to the media. She said, "for other purpose within public interest" was nebulous. She didn't know if she could concur in the amendments without further instruction from both the Motor Vehicle Administrator and the Attorney General.

{Tape : 2; Side : A}

Vote: Motion to adopt amendments SB 029302 carried 7-1, with **SEN. GROSFIELD** voting no, **SEN. HALLIGAN** excused.

SEN. RIC HOLDEN asked if there were other amendments.

SEN. DOHERTY said they weren't written up.

SEN. HOLDEN said he'd like to take up the amendment, **exhibit (3)**, because they didn't need another day to sit on it. He thought it was a public policy decision they could make.

Motion: **SEN. DOHERTY** moved **AMENDMENT to SB 293 REGARDING SECTION 6 2A, (exhibit (3))** with an exception.

Discussion:

SEN. DOHERTY said the amendments were in improper form. He would stop at, "for a legitimate law enforcement purpose". He wouldn't include, "or other purpose in the public interest." He appreciated the language, "for legitimate law enforcement purpose" because it had worked out in the past. He was skeptical at this point about the other part because it was too wide open. It wasn't clear and he suspected it would have to undergo the

balancing test anyway. He expected that to happen, but he didn't know what "other purpose in the public interest" meant.

Substitute Motion: SEN. O'NEIL made a substitute motion to include the **ENTIRE AMENDMENT**.

Discussion:

SEN. JERRY O'NEIL said he wanted the entire amendment because he felt the media should be allowed to show the picture of a missing person. He also was uncomfortable with the federal government making laws in Montana, so he wanted the bill to be broad.

SEN. DUANE GRIMES asked who would determine what the public interest was.

CHAIRMAN LORENTS GROSFIELD said that was his question as well. It would have gone for the first amendment too. "For a legitimate law enforcement purpose" was defined by whom, the press or the law enforcement agency? In the case of a missing person, it would likely be made by a law enforcement entity. He didn't have a problem with that.

SEN. O'NEIL said the request was made to the holder of the public records, and he presumed whoever made the request would also provide a reason for the request. He thought a person asking for a wrongful purpose could be held accountable. He thought there were checks and balances.

SEN. DOHERTY spoke against the substitute motion. He thought the entity who possessed the information would have to make the call. He believed that if they didn't make the call using the balancing test, they would be in trouble and rightfully so. He felt "legitimate law enforcement purpose" was already broad enough. He thought a missing person would be a legitimate law enforcement purpose, as well as publishing photographs of those breaking out of a compound.

SEN. GRIMES felt the missing person instance would be legitimate law enforcement related reasons. He asked for examples of "in the public interest" that would not be related to law enforcement.

John Kuglin, Montana Bureau Chief of Associated Press, said missing person.

CHAIRMAN GROSFIELD said missing person was a law enforcement kind of concern. He said the report about a missing person would go to them. Therefore, it seemed to be covered by the first part of the amendment.

Mr. Kuglin replied that he could recall only four or five instances when the news media had asked the Justice Department for drivers' license photos: 1) parents of Patrick Duffy following their murder in Boulder 2) Freeman case 3) Ted Kachzynski 4) forest fire fighter who was killed during duty in Colorado; request was denied 5) "Rat Man of Billings" was a man holed up in apartment with pet rats who held off law enforcement; request was denied. He said he wanted other public purposes for occasions that could arise, but did not want to tie the state's hands.

SEN. GRIMES said the photos looked like mug shots and if their use was to expand, it might not work in the law enforcement's favor to use a blase drivers' license photo. He also didn't know what "other purpose" could be.

SEN. MIKE HALLIGAN asked if the public interest criteria was included in the bill, how was that decision made by the repository of the record.

Brenda Nordlund, Department of Justice, said this was uncharted water. There was history with the media in Montana regarding release of photographs. She said it was outside the federal DPPA, so it was pursued with trepidation. She understood the media's interest. If it came to suit, she would say 1) it could come under DPPA sanctions 2) for purposes of the Montana Constitution, it would have to be put through the balancing test. She said in the past, when the test was applied, one criteria asked if the person had been subject to criminal prosecution. Ted Kachzynski was in the process of being arrested, or already had been arrested. The Freeman were also in the formal criminal procedure process. She said they hadn't released a photo where active proceedings were not pending. She said it was their criminal action that lead them to be more public figures for purposes of that kind of an analysis.

SEN. O'NEIL closed on his motion. He said it didn't look like it would open many records. The balancing test would still apply, so it wouldn't hurt people. He felt it should be adopted.

Vote: Substitute Motion **failed 2-7 with Holden and O'Neil voting aye.**

Discussion resumed on motion by SEN. DOHERTY:

CHAIRMAN GROSFIELD reiterated who would determine the legitimate law enforcement purpose and suggested adding language to make it more clear. He proposed adding, "when requested by the agency." He didn't know if that kept with the purpose.

SEN. DOHERTY considered that to be a friendly amendment.

CHAIRMAN GROSFIELD said that language would be added.

SEN. HOLDEN said he didn't like the new words because the news media could never go in and ask for the picture. The only time the picture would be released would be when the agency wanted it released. He felt there were times when the news media could actually be ahead of the game to help the public through the use of a photograph, which told a thousand words.

SEN. DOHERTY said he agreed with **SEN. HOLDEN** and suggested saying, "as determined by the agency" would be truer to the intent.

SEN. HALLIGAN asked if that was redundant language. He didn't think that language needed to be added because the agency was the repository and would have the authority anyway.

Ms. Nordlund said she had a copy of the amendment so she could respond to the question. She said the discussion was confusing because in the past, the request had been made to the Department of Justice and the Department of Justice was the agency who made the determination as to whether the release would occur. She said the new language proposal could refer to any state, local, or federal agency. She asked for clarification as to which agency would make the determination.

SEN. HALLIGAN asked how much dovetailed with the local law enforcement. What were the different levels of those possessing information and pictures. He wondered how much the Department of Justice controlled local dissemination.

Ms. Nordlund replied that in each of the instances where photos had been given out, except the Duffy case, the Department of Justice provided the photos to the news media. She said local officials had access to photographs as criminal justice agencies. Those photographs were used for local law enforcement.

SEN. HALLIGAN responded that agency clarification was needed so the news media could not get around the law by going to a different agency that also had access to photographs.

Ms. Nordlund said as long as the local law enforcement agency had access, they had the ability to control access to the photograph, independent of what the Department of Justice wanted.

SEN. GRIMES asked **Mr. Marquand** to respond.

Mr. Marquand said they wanted to make sure that if any law enforcement agency (Department of Justice, sheriff's department, highway patrol) wanted to make a photograph available to the news media, then the law should allow it. For example, if the police department wanted to release a drivers' license photo of a missing person, a fugitive, or somebody else for their purposes, then the media could receive that and use it without falling under sanctions. They wanted broad flexibility to use photographs for a public purpose.

CHAIRMAN GROSFIELD clarified that the bill dealt with the Department of Justice and not local law enforcement.

Ms. Nordlund said yes as applied to section 6, the permissible disclosure including highly restricted personal information. However, in section 8, controlling the re-release of information by a requestor, she submitted that a requestor could not release unless there was a permissible use under the bill. She said that was the crux of the discussion: could local law enforcement, upon receiving one of the Department of Justice's photographs through the criminal justice information network or directly through the Motor Vehicle driver licensing network take the photo and give it to the local media. She said under section 8, it was not clear whether the local law enforcement agency could do that.

SEN. DOHERTY supplied the scenario of the Department of Justice denying the request for a photo, but the county sheriff releasing it. He questioned who would be liable under the DPPA if there was an injury; the Department of Justice or the county sheriff.

Ms. Nordlund said the cause of action would be brought by the individual who's photo had been released. They would have the ability to name the defendants. She expected that the defendants would include the sheriff, who violated the DPPA, as well as the Department of Justice as the holder of records who didn't control re-disclosure.

SEN. GRIMES asked if the Department of Justice opposed the freedom of local law enforcement to use their discretion and when and when not to release photographs.

Ms. Nordlund said she had not discussed these scenarios with either the Motor Vehicle Division administrator nor the Attorney General. The past practice was that photos were only distributed through headquarters. If dissemination was granted to any federal, state, or local agency, that would substantially change the current practice.

SEN. GRIMES used a scenario of a kidnaping. He questioned if it was the media's intent to make it a right of local law enforcement to turn over a photograph of the kidnappers to the local media to alert the public to the kidnappers.

Mr. Kuglin said there could be a time element involved. If the local sheriff felt an immediate need for photo dissemination without delay, then they should have some local discretion.

{Tape : 2; Side : B}

SEN. DOHERTY said the issue brought to the floor regarding who could determine when or when not to release was something not discussed at all at the hearing. Therefore, he was uncomfortable with the appended language, "as determined by the agency" because the agency was unclear. If past practice had been that the Department of Justice made the call, and that worked, then that should remain the practice. He saw that it worked because the media and the Department of Justice had worked out an agreement in the past, regardless of the law's strict language. He understood that if the Department of Justice said no, but the local agency would give the photo, then the media would go with the picture. However, in the case of highly private personal information regarding the right of privacy in Montana, the practice should remain the same. He clarified his motion to say: "as determined by the department", which clearly referenced the Department of Justice, as opposed to the agency.

Vote: Motion to adopt amendments striking a phrase carried unanimously.

Motion: SEN. DOHERTY moved that SB 293 DO PASS AS AMENDED.

Discussion: None

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON SB 242

Motion: SEN. MIKE HALLIGAN moved AMENDMENTS SB024201.

Discussion:

Valencia Lane, Legislative Staffer, explained the amendments. She recalled that **Alec Hansen, MT League of Cities and Towns**, brought an amendment during his testimony. These amendments were the ones he proposed. She believed the intent of the amendments were to retain the current bill, in removing the donut area from

municipalities so they couldn't extend their jurisdiction by 4.5 miles. In addition, the amendment provided that counties could enact building code areas that were less than the entire county. It allowed counties to adopt areas where the building codes would apply and it would have to be adopted according to current law.

SEN. HALLIGAN said this issue had been around for years and he wanted to deal with it this time. It eliminated the 4.5 mile extraterritorial, putting it under local control so the counties could decide. It left the rural parts of the county as rural and didn't allow the city to interfere. It was a good compromise.

SEN. RIC HOLDEN asked if it would be the county commissioners who decided the new districts.

SEN. HALLIGAN replied they were the only ones the code referred to; he felt a planning or zoning board would not have jurisdiction over the building codes.

Ms. Lane said the 3rd amendment inserted a new subsection 6 under the definitions to define a county jurisdictional area as the entire county or an area or areas within the county, which didn't include municipalities designated by the county to be subject to the building codes as provided in 50-60-301 and 302.

SEN. HALLIGAN did not care if the amendment stated county commissioners to make it more clear.

Ms. Lane clarified "designated by the county" meant it had to be by county action. She didn't know how it could be otherwise.

SEN. HOLDEN was concerned that the county commissioners were the ultimate authority. He didn't want a planning board to do something. He wanted the commissioners to have the final say over what the planning board would do.

CHAIRMAN GROSFIELD noted that 50-60-301 began with, "the local legislative body". He believed that language indicated the commissioners and nobody else.

SEN. WALT McNUTT said Richland County had something similar to this now and some of the activity was coordinated with an inspector and the one who issued the permits. He liked the approach and would vote for the amendment.

Substitute Motion: **SEN. O'NEIL** made a substitute motion **TO ADD TO THE AMENDMENT.**

Discussion:

SEN. JERRY O'NEIL wanted to add to the amendment to allow the residents of the newly established building codes area to vote on the issue before the county commissioners enacted it.

SEN. HALLIGAN opposed the motion because when the commissioners were looking at the issue, they would notice public hearings in the specific areas that would be affected by the building codes. They would be foolish if they tried to expand beyond their scope. He felt putting a special election or a public vote would add a tremendous cost to local governments. It didn't seem like it would accomplish much.

SEN. McNUTT opposed the amendment. He thought the amendment allowed the people to vote whether they liked the building codes or not, or wanted to be a part of that. He said if the people were allowed to vote on this, maybe they should vote on whether they wanted to pay to the county road fund. The elected county commissioners would conduct the hearings and set-up the procedure. He didn't feel that a vote of the constituents in the area was needed because they could go to the public hearing to express their concerns. Nothing would be taken away from the people of the area if the vote was not given. They already voted for the county commissioners which covered their representation right.

SEN. O'NEIL said provisions in current law allowed people to vote on special improvement districts. It seemed proper government that the people affected would have the right to vote on the issue. He was looking to protect the little groups of people because it was a part of the republican form of government.

SEN. HALLIGAN said the only difference with that scenario was the people were voting on the imposition of a tax.

SEN. O'NEIL countered it wasn't a designated tax, but it could become a user fee by charging for inspection. Then it had the same application as a tax.

Ms. Lane inputted that as a technical matter, the amendment was a substantive issue. It would not be appropriate to place it under this definitional section. It would be more appropriate to amend one of the existing sections in 50-60-3. She asked if it was passed in concept, that it not be an amendment to the definition section of the bill. As a substantive issue, it should come elsewhere in the bill.

CHAIRMAN GROSFIELD said that the bill would not pass out of committee until this proposed amendment could be properly placed within the statute and reviewed again by the committee.

Vote: Substitute Motion to allow public vote **failed 2-6 with Grosfield and O'Neil voting aye, SEN. STEVE DOHERTY** excused.

Discussion resumed on SB 24201 amendment:

SEN. DUANE GRIMES said the intent was to provide some local county level alternatives in the areas where they viewed the building codes as necessary. He felt that made sense. However, it didn't make sense to impose the possibility of building codes on county planning personnel that had never had to deal with that issue.

SEN. HALLIGAN responded that if Richland County was doing it, he suspected the county commissioners had already dealt with those kinds of issues. He didn't think this sent counties any more of a message than what they already had.

SEN. McNUTT said his business was outside the city limits. The county wide building code was inspected by one person who inspected the city as well as the county. He said the system was working and complaints were not being lodged. The city and county had different codes. He felt the system was good, it was proactive.

CHAIRMAN GROSFIELD responded to the imposition of rules. He found county and city planning boards frustrating. He felt the two did not coordinate to know what the needs of each group were or how their plans could inter-relate. He felt the amendment could help facilitate communication between cities and counties. If an area could be annexed, it would behoove the city to communicate with the county to figure it all out. He felt it promoted a healthier and more responsible look at growth issues between cities and counties. He liked the idea.

Vote: Motion to adopt amendment SB024201 carried 6-2 with Bishop and O'Neil voting no, **SEN. DOHERTY** excused.

Motion: **SEN. HALLIGAN** moved that **SB 242 DO PASS AS AMENDED.**

Discussion:

CHAIRMAN GROSFIELD asked about transition. There were eight municipalities who had some building code control over the donut areas around them. He suspected most counties would not automatically adopt building codes in the same area. He asked if they should consider transition issues.

{Tape : 3; Side : A}

Alec Hansen, League of Cities and Towns, replied sometime in April they would notify those cities with jurisdiction that it would be effective on October 1, and they would have to make plans for the county to assume jurisdiction over the areas. It would be a decision the county would have to make. Based on testimony at the hearing, he thought at least Flathead County would not assume jurisdiction. In a period of six months, it could be done. He said most of the work would occur in Bozeman, Billings, and Missoula. Miles City and Fort Benton weren't in the same category. He acknowledged it would take some planning. An extension on the time would give more time, but he felt it could happen between the passage of the bill and October 1 without too much pressure.

CHAIRMAN GROSFIELD re-referred to **SEN. O'NEIL**.

SEN. O'NEIL agreed with **Mr. Hansen**.

SEN. HALLIGAN felt the Flathead constituents wanted it to happen sooner rather than later. He did not think that a delayed effective date was needed.

SEN. HOLDEN fully supported the legislation. He felt his constituents would also support the bill. In his area, a farming district bordered on the city limit. An area of 4.5 miles did not seem like much, but when looking out over 4.5 miles, it encompassed farms and ranches that were very rural in nature. There was no reason for the city to have jurisdiction over how those people built/maintained their homes. Putting these areas under county commissioner control was very appropriate. He hoped for a strong positive vote.

CHAIRMAN GROSFIELD asked **Valencia** to look-up county authority. 50-60-301 addressed adopting a building code for an area. He didn't think it differed much from adopting a zoning area. He was looking for any sort of implication.

Ms. Lane said county government operation was in Title 7. 7-5-103 addressed adopting ordinances. She read that ordinances had to be submitted in writing. It could not contain more than one comprehensive subject. It had to be read and adopted by a majority vote of the members present at two meetings of the governing body not less than 12 days apart. After first reading, the public must be notified. After approval, the ordinance had to be signed by the chairman of the governing body and properly filed. This showed what the county would have to do to adopt an ordinance.

CHAIRMAN GROSFIELD clarified that they could not hold a meeting then act. He asked about public notification.

Ms. Lane replied after the first adoption and reading, it had to be posted and copies made available to the public.

SEN. HALLIGAN picked up on the one subject requirement, saying that if they wanted to adopt building and zoning, they would have to deal with one issue, then work on another.

Ms. Lane agreed then read from 7-5-108. She felt it applied to a building code.

CHAIRMAN GROSFIELD said his point in raising the issue went back to allowing the people to vote. He wanted to know if provisions already existed for public notice. He felt there were, so if the people wanted to voice concerns, they had the opportunity. He was reasonably comfortable with that.

Vote: Motion that **SB 242 Do Pass As Amended carried 8-1 with Bishop voting no.**

ADJOURNMENT

Adjournment: 11:00 A.M.

SEN. LORENTS GROSFIELD, Chairman

ANNE FELSTET, Secretary

LG/AFCT

EXHIBIT (jus30aad)